

## NEW ZEALAND

### Annual Report on Consumer Policy Developments 2001

#### I. INSTITUTIONAL DEVELOPMENTS

The Ministry of Consumer Affairs was established on 1 July 1986. It is an operating branch of the Ministry of Economic Development (MED), but on policy and operational matters reports directly to the Minister of Consumer Affairs.

The vision of the Ministry of Consumer Affairs is:

“Well-informed consumers, fair trading practices, safe products used safely”.

The Ministry works with consumers and business to:

- provide high quality advice to the Government on laws, practices and policies affecting consumers
- promote consumer and public rights to safe products and services, and their responsibility for using products safely
- provide information, education and advice to consumers and business
- ensure that transactions based on weight and measure are accurate, fair and consistent with international standards
- promote improved consumer practices and encourage compliance with codes, standards and laws.

The Ministry operates in the areas of policy, information and education, and trading standards (trade measurement and consumer safety). In addition, the Ministry of Economic Development’s Energy Safety Service, which was aligned to the Ministry of Consumer Affairs in 1999 under the management of the General Manager Consumer Affairs, is responsible for electricity and gas safety, supply quality and measurement, and petroleum fuel quality monitoring.

There are 65 staff in the Ministry of Consumer Affairs, including the Energy Safety Service, and the annual Vote: Consumer Affairs budget is approximately NZ\$4.5 million (mainly Crown funded). The Energy Safety Service has a budget of NZ\$3.9 million, funded mainly by industry levies.

The Ministry administers and enforces the Weights and Measures Act 1987 as well as regulations made under that legislation. It also administers<sup>1</sup>

- the Door to Door Sales Act 1967
- the Hire Purchase Act 1971
- the Layby Sales Act 1971
- the Unsolicited Goods and Services Act 1975
- the Fair Trading Act 1986 and regulations
- the Consumer Guarantees Act 1993
- the Credit (Repossession) Act 1997.

The Energy Safety Service administers and enforces<sup>2</sup>

- the Electricity Act 1992 and associated regulations covering safety, supply quality and measurement requirements
- the Gas Act 1992 and associated regulations covering safety, supply quality and measurement requirements
- Petroleum Products Specifications Regulations 1998 covering supply quality requirements
- the Ministry of Energy Abolition Act 1989 and associated regulations, covering electricity and gas levy requirements.

## **II. CONSUMER SAFETY**

The Ministry of Consumer Affairs works with a number of other agencies in the consumer safety spectrum responsible for product safety in specialist areas:

- Commerce Commission - see below under *Fair Trading Act*
- Accident Rehabilitation and Compensation Insurance Corporation - safety promotion and research
- Environmental Risk Management Authority - hazardous and noxious substances
- Land Transport Safety Authority - road vehicles and accessories
- Ministry of Agriculture and Forestry - pesticides
- Ministry of Health - foods, medicines and toxic substances

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<sup>1</sup> The Commerce Commission enforces the Fair Trading Act and the remaining Acts are self-enforcing – i.e., enforced by the acts of individual consumers seeking redress.

<sup>2</sup> In addition, the Energy Safety Service enforces, but does not administer, the Hazardous Substances and New Organisms Act 1996 and associated regulations covering provisions for the handling of fuel gases.

- Ministry of Labour - workplace related safety, dangerous goods
- NZ Customs - import bans of unsafe goods
- Standards New Zealand – voluntary national standards.

Because of this, some consumer safety reports and complaints the Ministry receives are referred to other agencies for action.

### ***Fair Trading Act***

Under the Fair Trading Act 1986 the Minister of Consumer Affairs may recommend the making of product safety standards. The Minister may also declare goods to be unsafe (i.e. ban them) or require a supplier to recall goods which do not comply with product safety standards, or which otherwise may put the public at risk of injury. All goods which contravene product safety standards, or which have been declared unsafe goods, or which are subject to compulsory recalls may not be supplied in New Zealand and are deemed to be prohibited imports under section 54 of the Customs and Excise Act 1996.

The Commerce Commission enforces product safety standards, unsafe goods declarations and compulsory recalls of goods in New Zealand.

The Ministry received 120 reports about allegedly unsafe goods in 2001. A risk assessment procedure is applied to all product safety reports received in order to assist the Ministry in prioritising its work. The procedure involves combining ratings for four factors (maximum potential injury, probability of hazard occurrence, probability of the hazard being recognised, and product availability) on a nomograph to give a numerical risk assessment.

Of the reports received during 2001, 14 resulted in recalls, modifications or safety publicity, 19 were referred to other agencies for investigation, 62 were recorded for ongoing monitoring, and 20 reports were deemed low risk, unsubstantiated or requiring no action. The largest category of reports was received for nursery equipment and supplies (25), followed by toys (15) and packaging containers (11).

The Commerce Commission carries out inspections to check for compliance with the product safety standards that are mandated under section 30 of the Fair Trading Act. Fifty-seven inspections were carried out during the year. The 57 inspections resulted in 21 warnings being issued and 11 settlements being signed. Three of the inspections resulted in court action being taken. One of these prosecutions concerned a breach of the product safety standard for bicycles, the other two related to the labeling of t-shirts (it was implied that the garments had been made in New Zealand when they had in fact been made elsewhere).

No new product safety standards came into effect during the year, although a new product safety standard concerning baby walkers was introduced to take effect in March 2002. An Unsafe Goods Notice was also gazetted to take effect for an indefinite period from January 2002 in regard to candles containing more than 0.06% lead by weight in their wicks. Products voluntarily recalled by suppliers during 2001 included babies' rattles, bicycles and candlewicks containing lead.

New Zealand and Australia have co-operated to produce new joint standards and harmonised regulations for the safety of children's night-clothes. Previously each country maintained its own standards and regulations. These regulations have been approved and are now in force in both countries.

## ***Energy Safety***

In 1999 the Ministry of Economic Development and the Occupational Safety and Health Service of the Department of Labour commenced a review (“EnergySafe”) of the electrical and gas safety regimes. The aim of EnergySafe is to introduce changes that will reinforce:

- all electrical and gas work being carried out in a safe manner and resulting in a safe completed product
- a specified range of work only being carried out by a competent person
- a subset of that specified work only being carried out by a licensed person
- consistent certification processes for energy safety work
- the results of complaints against energy workers matching the offence, being timely and resting on natural justice and fair standards of proof.

A public consultation document on EnergySafe was prepared and distributed widely, and publicity given to the changes proposed in the document. Responses were received from almost 500 organisations and individuals.

During the year industry-wide consultation occurred on the declaration processes to be used in the supply of electrical and gas appliances. This consultation resulted in broad agreement. The necessary regulation changes are to be prepared and, in the case of gas appliances, mutual recognition discussions with our Australian counterparts to be resolved.

The year was significant for the low level of deaths and injuries for electricity and gas related accidents. In 2000, there were only two deaths from electrical accidents (the lowest for eight years) and no fatal natural gas or LPG accidents (the first time in eight years that there has been no LPG related death). The year was highlighted by two community based initiatives to improve energy safety.

The first is an electrical and gas safety education programme on the East Coast of the North Island. The focus of this has been marae based seminars, visiting second hand electrical dealers, schools, service clubs and retailers. There has also been a close working relationship with local electricians and inspectors in the region to help spread the energy safety message and to support a sustainable safety focus.

The second development is a co-operative venture with the Maori Women’s Welfare League to deliver key energy safety and consumer safety messages.

## ***Prodsafe***

The Ministry of Consumer Affairs continues to administer on behalf of the OECD the Internet mailing list for notifications and information exchange on product safety. The mailing list, known as PRODSAFE, is available to product safety officials throughout the OECD. Membership is restricted to OECD national contact points and other people in government agencies working in product safety.

The Ministry continued to distribute information to product safety network members and the public through its newsletter and news releases.

### **III. PROTECTION OF CONSUMERS' ECONOMIC INTERESTS**

#### ***Electronic Commerce***

The New Zealand Model Code for Consumer Protection in Electronic Commerce was issued in October 2000. It is based on the Australian Best Practice Model for Electronic Commerce and draws on the OECD Guidelines on Consumer Protection in the Context of Electronic Commerce. The Electronic Marketing Standards Authority (eMSA) was launched in April. This self-regulatory initiative is a joint venture of the Direct Marketing Association (DMA) and the Advertising Standards Authority (ASA). eMSA is a web-based initiative, allowing consumers to make complaints online, and will enforce the codes of the DMA and ASA. The DMA has re-issued its code of marketing practice, which is based on the Model Code.

#### ***Electricity***

Following the reforms of the 1990s, which culminated in a split between lines and retail power companies, the Government conducted an inquiry into the electricity industry in 2000. This resulted in the Ministry of Consumer Affairs' involvement in a number of key initiatives, including the Electricity Consumer Code of Practice and the Electricity Complaints Commissioner Scheme - both of which are covered in the Ombudsman Schemes section of this report. The Ministry also contributed to the development of a self-regulatory rule book intended to govern the operation of the wholesale electricity market.

In response to specific concerns expressed by consumers, the Government has also sponsored an online service to help consumers compare retail electricity prices and plans ([www.powerswitch.org.nz](http://www.powerswitch.org.nz)). The service is a collaboration between the Ministry of Consumer Affairs, the Consumers' Institute, and the Citizens' Advice Bureaux. Consumers without access to the website can enlist the assistance of their local Citizens' Advice Bureau or call the Bureau toll-free to access the information on their behalf.

#### ***Telecommunications***

Following the Ministerial Inquiry into Telecommunications, the Government has passed legislation regulating the telecommunications industry and establishing a Telecommunications Commissioner within the Commerce Commission. The Commerce Commission will be responsible for resolving disputes between members of the industry over regulated services and to determine the costs of, and liabilities for, telecommunication service obligations.

#### ***Review of Consumer Credit Law***

The Government has approved proposals to draft new consumer credit legislation, following an extensive review process. The new legislation would replace the Credit Contracts Act 1981 and the Hire Purchase Act 1971 with a Consumer Credit Bill. The proposals will modernise the law and will be designed to cater for existing credit practices, including the computerisation of banking and financial services, as well as future credit products. The proposals would provide improved redress for consumers, a public enforcement agency to prosecute breaches of the law, better information for consumers to help them make credit decisions, and a fairer deal in relation to interest charges, fees, and early repayment. The Consumer Credit Bill is expected to be introduced into Parliament during 2002.

### ***Consumer Guarantees Act Amendment***

The Consumer Guarantees Act (consumer post-sale legislation covering goods and services) is being amended to cover utilities and computer software, after a court decision held that electricity and associated line function services are neither goods nor services for the purposes of the Act. Draft legislation was introduced to Parliament late in 2001 and is now proceeding.

### ***Fair Trading Act***

The Fair Trading Act prohibits misleading and deceptive conduct and false representations in relation to the supply of goods and services in trade. It also provides for the development of product safety and consumer information standards.

A Bill was introduced to Parliament prior to Christmas 2001 to strengthen enforcement in a number of ways. The Bill increases penalties across the board, and proposes a new commercial gain penalty for pyramid selling schemes, which would allow the Courts to impose an additional penalty to effectively cancel out pyramid scheme profits.

The Bill also proposes to broaden the Commerce Commission's search powers and creates a new power that would allow the Commerce Commission to issue a notice requiring witnesses to release documents or information to assist with its investigation.

The Commerce Commission is responsible for enforcing the Fair Trading Act. The Commission takes action where issues meet certain criteria such as a widespread consumer detriment, repeated breaches by a trader, an industry practice, or a matter where a precedent is necessary. During the year 1 January to 31 December 2001, the Commerce Commission received 12,464 enquiries (excluding product safety standard enquiries) and a total of 374 matters were selected for investigation. The Commission resolved 212 of these matters by warning the trader about the practice or entering into a settlement with the trader.

During the year, 32 prosecution cases (excluding product safety cases) were commenced by the Commerce Commission. Included in these were several concerning real estate agents. The Commerce Commission is also beginning to see prosecutions in the education and training sector, the travel industry and in food cases relating to "value-added" food claims such as organics and "free range" eggs.

### ***Internet Sweep Days***

The Ministry has participated in each IMSN, ACCC co-ordinated, sweep day in 1997, 1998, 1999, 2000, and 2001.

In 1998 33 sites were visited regarding claims for arthritis and cancer "cures" or medical "miracles". One month later, three sites had been removed and six had amended their text.

In 1999 56 sites were visited to check the quality of on-line information for prospective buyers. Unlike previous sweeps, only New Zealand on-line retail sites were targeted. The sweep results received wide media coverage. Participants in this sweep day found it easier to look for answers to questions posed about information contained on the site than to ascertain the legitimacy of health or get-rich-quick investment schemes.

In 2000, a "Dot.Con" sweep of websites focussed on those offering "get rich quick" schemes. This sweep was co-ordinated by the US Federal Trade Commission. Sites targetted in the Sweep were generally based overseas.

In 2001 the sweep returned to focus on online retailing. Information on New Zealand websites was measured against a set of criteria based on the OECD Guidelines for E-Commerce. 66 sites were visited during the sweep. Sites were most deficient in the areas of providing information on privacy and disclosing terms and conditions relating to return of merchandise. Of the sites visited, 20% requested more information about the sweep and the OECD guidelines to enable them to improve their site for consumers.

### ***Scams***

In September 1999, in response to complaints being received from the public about prize and lottery promotions from overseas, the Ministry introduced a Scam Watch service on its website. The site has grown to list over 150 named scams as well as providing information on types of scams being promoted in New Zealand.

The site lists pyramid selling schemes (both prosecuted or warned by the Commerce Commission), false prize and lotteries, pro forma invoicing schemes (false billing), "Nigerian letter" 419 frauds, unregulated investment schemes, work from home schemes, and frauds promoted on the Internet. It encourages people to provide information on scams they have received.

The Ministry continues to work with the Commerce Commission, Securities Commission, and Serious Fraud Office to share information on scams. It has also liaised with Canadian and Australian authorities regarding investigations into prize and lottery schemes operating with Canadian addresses, providing information from consumers targeted by the schemes. Information on current scams is also provided to Australian consumer protection agencies monthly. The Ministry is also taking part in the development of an education campaign with Australian agencies to improve consumer knowledge and awareness of overseas prize and lottery scams sent through the postal system.

### ***Trade Measurement***

The Weights and Measures Act 1987 requires that the system of weights and measures for use in trade in New Zealand be metric, and it specifies the procedures for compliance with internationally accepted requirements for legal metrology. The Ministry's Trading Standards Service administers the Act and its regulations.

The Ministry operates a trade measurement accreditation scheme whereby private sector organisations are accredited to test and verify measuring instruments used for trade. Applicants are required to operate a quality management system and to demonstrate competence in the testing procedure. A review in 1998/99 refined the scheme to reduce compliance costs whilst ensuring that the scheme's integrity was maintained. Metering of hydrocarbons from high flow measuring instruments is now included in the scheme.

The three Trading Standards Service laboratories and their staff are accredited to ISO Guide 17025 for their work in calibration and verification of standard measures of mass, volume and length. During 1999 the accreditation to ISO Guide 17025 was extended to cover the type approval of non-automatic weighing instruments used for trade.

Legislation providing for the technical implementation of the Average Quantity System (AQS) was passed in November 2001. AQS is an international framework of measurement for pre-packaged goods. Legislation was passed in September 2001 providing for requirements for quantity marking on packaged foods to be included within weights and measures regulations. This will replace quantity marking requirements currently within the Food Regulations 1984, which will be lost when the Joint Australia New Zealand Food Standards Code comes fully into force.

A strategic inspection programme was maintained to check for weights and measures compliance on measuring instruments and on food and non-food products. Thirteen infringement offence notices were issued and 89 warnings issued.

### ***Consumer Representation***

The Ministry of Consumer Affairs has completed a research project to identify, in specific operational terms, the problems experienced with consumer representation and possible solutions to those problems. The research drew on the experience of consumer representatives, the Chairpersons of statutory boards, and government officials. Consumer representation processes are already occurring in New Zealand, and the intention of the research was to add value to those processes because effective consumer representation improves the quality of decision-making on matters affecting consumers and the wider community.

The Ministry proposes that, subject to Cabinet approval, the outcome of the research will be the development and implementation of Guidelines for Consumer Representation. These guidelines would be developed in consultation with government agencies and consumer groups, and the Ministry envisages that they would include:

- A description of the purpose and value of consumer representation
- A direction that the consumer constituency be identified and provided to all involved before any nomination process is initiated
- Advice regarding the qualities of effective consumer representatives
- Advice regarding the best way to ensure the nomination of a diverse range of effective consumer representatives
- Advice regarding the practical and other difficulties for consumer representatives, and solutions to those difficulties.

## **IV. CONSUMER INFORMATION AND EDUCATION**

### ***Ministry of Consumer Affairs Programmes and Resources***

The Ministry of Consumer Affairs targets its information, education and compliance programmes towards consumers who are most disadvantaged in the marketplace in terms of education and income and towards the traders who deal with those consumers, and focuses on issues of most consumer detriment. These issues frequently involve credit and/or motor vehicles.

The 90 Citizens' Advice Bureaux throughout New Zealand are a key source of consumer information through their toll free services. The Ministry provides a user-friendly consumer law manual for bureaux workers and a hotline on which they may call the Ministry's legal advisors for extra consumer help for their clients. Bureaux along with Family Budgeting Services and Community Law Centres also receive quarterly packs of up-to-date information and resources. The

Ministry also provides a comprehensive annual training programme in consumer law for Citizens' Advice Bureaux and Family Budgeting Services.

The Ministry uses radio and community newspapers to reach Maori and Pacific Island consumers, and undertakes regular community activities to promote consumer rights.

The Ministry produces on average one media release per week. Topics range from product safety warnings, to education on current issues (eg, scams) and legislative changes (eg, changes to the Fair Trading Act).

The Ministry also produces *A Word of Advice* every fortnight. This is a column designed specifically for community newspapers, which are delivered free to letterboxes. The column focuses on consumer rights and current consumer issues. We have an active list of over 60 community newspapers receiving the column.

The Ministry's Consumerkids website ([www.consumerkids.govt.nz](http://www.consumerkids.govt.nz)) provides students aged from 8 to 15 and their teachers with an electronic resource that is closely aligned with relevant parts of the school curriculum. Visitors to the site have a choice of either English or Maori language. The aim of the site is to help children become familiar with the Internet, learn while they play on the Internet, and become smart shoppers.

The Ministry's main website is an extensive information resource for both consumers and traders. It includes information and advice about their rights and responsibilities, lists scams currently circulating in New Zealand, alerts consumers to product warnings or recalls, and calls for input on policy/discussion papers.

The Ministry produces a newsletter, *Consumer Affairs*, three times a year, which is sent to approximately 1,500 groups and individuals.

The Ministry undertook a number of energy safety publicity and information activities during the year, including:

- building a new Energy Safety Service website with information for consumers and industry and a section featuring outline forms for accident notification
- running a gas and LPG safety campaign, in conjunction with the industry, which included the production and distribution of a gas safety pamphlet and poster and an LPG swing tag
- publishing a summary of electrical and gas accidents from 1998 to 2000
- reprinting the booklet, *If it can heat you, it can hurt you*
- printing and distributing the summary of responses to the *EnergySafe* consultation document
- producing a fridge magnet with energy safety messages
- issuing media releases on a range of topics including: hot water bottles and kettles, keeping children safe, dangerous night lights, LPG cabinet heater safety, working outside, and Christmas lights
- publishing articles in industry and special interest publications
- running a targeted education programme in the Gisborne region

- targeting safety advice to Maori through community agencies, marae meetings, and public displays
- hosting displays at events such trade shows, expos, and festivals

### ***Commerce Commission Programmes and Resources***

The Commerce Commission undertakes to visit places where it does not have an office, jointly with the Ministry of Consumer Affairs, with the aim of educating traders about consumer protection law. Each of these visits involves speaking with trader and community groups and holding a seminar. Seminars are also held for professional bodies. During the year, the Commerce Commission gave 43 seminars and several speeches in relation to the Fair Trading Act.

In the past the Commerce Commission has worked closely with companies on its Major Trader Programme to increase their levels of compliance with the Fair Trading Act. However, during 2001 the Major Trader Programme was put on hold as it was under review.

The Commerce Commission publishes two newsletters, *Fair's Fair* and *Compliance*, which deal with its work in enforcing the Fair Trading Act and the Commerce Act. The Commerce Commission also issued 25 media releases on Fair Trading Act issues.

### ***Consumers' Institute***

Comparative product testing and brand name surveys of goods and services are undertaken by Consumers' Institute, a non-governmental consumer organisation. Consumers' Institute produces two magazines and an online service for its subscribing members. *Consumer* magazine publishes the findings of the Institute's research and general consumer information and advice, comparative testing and other public affairs issues. In 2001 it was circulated to 87,166 individuals and organisations. *Consumer Gardening* is the Institute's specialist magazine, which had 40,830 subscribers in 2001. During 2001, Consumers' Institute went online with a new service called *Consumer Online* at [www.consumer.org.nz](http://www.consumer.org.nz). This site offers general advice and some free information to non-members; and in-depth studies, background information and test results to subscribers. The Institute has also published a series of guidebooks over the years - from saving for retirement to practical guidelines for coping with stress. All members of the Institute are entitled to request consumer advice from the Institute's advisory service.

### ***Fair Go***

Television New Zealand continued to run its series of the popular consumer complaints programme, *Fair Go*. Other television programmes are also dealing with consumer issues.

## **V. REDRESS AND COMPLAINTS FACILITIES**

### ***Tribunals***

The Department for Courts administers Disputes Tribunals, which provide inexpensive, informal and fair resolution of minor disputes. The Tribunals can deal with claims of up to NZ\$7,500 (or \$12,000 if both parties agree). The cost of taking a claim ranges from NZ\$30 to NZ\$200, depending on the amount claimed. A new position of Principal Dispute Referee was established in 1999 to oversee the consistency and quality of decisions made by Disputes Tribunal referees.

## ***Ombudsman Schemes***

The Office of the Ombudsmen has the jurisdiction to make recommendations on the actions of government departments, state owned enterprises and electricity suppliers. Two private sector industries - banking and insurance - have permission to use the term Ombudsman for their external complaints handling resolution schemes. The electricity industry was not permitted to use the term Ombudsman for its external complaints handling resolution scheme (Electricity Complaints Commissioner) however the scheme operates in the same manner as an industry ombudsman scheme.

The Office of the Banking Ombudsman was established in 1992. The Banking Code of Practice requires that all banks have an internal complaints resolution mechanism which a customer must use before complaining to the Banking Ombudsman. In the year ended June 2001, the Office received 1,112 complaints and completed 1,118 (some were carried over from the previous year). The Code of Banking Practice is currently being reviewed and is expected to be finalized by November 2002.

In 1993, the insurance industry set up an Insurance and Savings Ombudsman Scheme on criteria very similar to the banking industry's scheme. It commenced operations in March 1995. During the 12 month period ended June 2001 the office completed a total of 274 complaints, 344 being investigated that year.

In August 2001, the electricity industry set up the Electricity Complaints Commissioner Scheme along similar lines to the Banking and Insurance and Savings Ombudsman schemes. The Commissioner took up office in January 2002. The scheme is underpinned by the Electricity Consumer Code of Practice which was developed by industry in consultation with the Ministry and consumer representatives.

## **VI. RELATIONS BETWEEN CONSUMER POLICY AND OTHER ASPECTS OF GOVERNMENT POLICY**

New Zealand's economy continues to be underpinned by the principle that a competitive economy supports economic growth and prosperity. Recent trends are for the Government to take a more active role in regional and economic development activities and to look closely at the operation of key markets such as electricity and telecommunications, to determine whether the Government's involvement and regulatory frameworks that apply are effective in supporting the delivery of the best outcomes for consumers.

The Ministry's work is based on the premise that competitive markets can benefit both consumers and business but that in some cases intervention is necessary to ensure that consumers' legitimate rights and interests are met. The Consumer Guarantees Act and the Fair Trading Act are two important pieces of legislation that contribute to meeting consumers' interests. New emphasis is being put on credit law, motor vehicle sales law, electronic commerce, and broader issues such as consumer representation in policy development to enhance the position of consumers.

The Ministry promotes the concept of self-regulation and works with industry towards the development of Codes of Practice. During 2000, the Ministry released two documents to assist industry to develop self-regulatory initiatives: the *Guideline for Developing a Code of Practice*, and the *New Zealand Model Code for Consumer Protection in Electronic Commerce*. The Ministry continues to give liaison and give assistance to industry groups as required.